STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ANTHONY CHRISTOPHER NAMO, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TALAL NAMO,

Respondent-Appellant.

UNPUBLISHED
February 23, 2006

No. 263542
Oakland Circuit Court
Family Division
LC No. 03-685424-NA

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g). We affirm.

The trial court did not clearly err in determining that the statutory ground for termination of parental rights was established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence showed that respondent provided care and custody for Anthony for a short period of time, and during that time exposed Anthony to the dangers inherent in drug dealing. Thus, the evidence was clear that respondent failed to provide proper care or custody for Anthony.

At the time of termination, respondent was incarcerated for a minimum of 1½ to a maximum of 20 years. In light of his uncertain release date, the requirement that he complete services after release, and his past demonstrated lack of motivation to abstain from criminal behavior even though Anthony's custody was at stake, the trial court did not clearly err in finding no reasonable expectation that respondent would be able to provide proper care or custody for Anthony within a reasonable time. Case law in Michigan allows for termination of parental rights based on a respondent's criminality, even though his crimes were not against the child where the consequent incarceration for those crimes gives rise to an inability to provide proper care or custody for the child within a reasonable time. In this case, a proposed guardianship with Anthony's maternal grandmother did not constitute acceptable alternate proper care or custody because Anthony had already been subject to two guardianships in the first five years of his life, and yet another guardianship would not afford him the permanence he needed.

Furthermore, the trial court properly concluded that termination of respondent's parental rights did not clearly contravene Anthony's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Anthony was acquainted with respondent, but had been parented by various people in his young life, and there was no evidence of a special bond with respondent. The trial court correctly noted that the Legislature intended a child to be provided a permanent, stable home for the duration of childhood, if possible. After years of instability, Anthony deserved the stability offered by termination of respondent's parental rights, and not another guardianship.

Additionally, we find no merit to respondent's argument that naming him as a respondent in the original termination petition violated the holding in *In re KH*, 469 Mich 621; 677 NW2d 800 (2004). The Michigan Supreme Court held in *In re KH* that a putative father may not be named as a respondent in a termination petition until he establishes a legal relationship to the child who is the subject of the petition. *Id*. at 633-636. Respondent did not preserve this issue for review by raising it before the trial court. Nor did he request in the trial court, or on appeal, retroactive application of the judicial decision in *In re KH*. Moreover, respondent suffered no detriment, but benefited by being named a respondent in the original petition. And retroactive application of *In re KH* would have had no effect in the present case because by the time *In re KH* was decided, respondent had established paternity and been properly named a respondent in the amended termination petition.

Lastly, no reversible error occurred by petitioner's failure to contact respondent in accord with MCL 722.628(2), or to establish a service plan. Respondent received all of the information required by MCL 722.628(2) in the petition, communicated with the DHS, and made his proposed plan for Anthony known through counsel. Contact for purposes of arranging services was not necessary because the DHS's goal was termination of respondent's parental rights at the initial disposition, and no service plan was anticipated or required. MCL 712A.18f(1)(b); *In re Terry*, 240 Mich App 14, 25 n 4; 610 NW2d 563 (2000).

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey